

**Unofficial Draft Copy**

As of: September 7, 2004 (1:27pm)

LC5003W

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

1 A Bill for an Act entitled: "An Act providing that a third-party  
2 claimant may not bring an action for bad faith in connection with  
3 the handling of a medical malpractice insurance claim; amending  
4 section 33-18-242, MCA; and providing an applicability date."

5  
6 Be it enacted by the Legislature of the State of Montana:

7  
8 **Section 1.** Section 33-18-242, MCA, is amended to read:

9 **"33-18-242. Independent cause of action -- burden of proof.**

10 (1) An insured or a third-party claimant has an independent cause  
11 of action against an insurer for actual damages caused by the  
12 insurer's violation of ~~subsection~~ 33-18-201(1), (4), (5), (6),  
13 (9), or (13) ~~of 33-18-201~~.

14 (2) In an action under this section, a plaintiff is not  
15 required to prove that the violations were of such frequency as  
16 to indicate a general business practice.

17 (3) An insured who has suffered damages as a result of the  
18 handling of an insurance claim may bring an action against the  
19 insurer for breach of the insurance contract, for fraud, or  
20 pursuant to this section, but not under any other theory or cause  
21 of action. An insured may not bring an action for bad faith in  
22 connection with the handling of an insurance claim. A third-party  
23 claimant may not bring an action for bad faith in connection with

1 the handling of a medical malpractice insurance claim.

2 (4) In an action under this section, the court or jury may  
3 award such damages as were proximately caused by the violation of  
4 subsection 33-18-201(1), (4), (5), (6), (9), or (13) of  
5 ~~33-18-201~~. Exemplary damages may also be assessed in accordance  
6 with 27-1-221.

7 (5) An insurer may not be held liable under this section if  
8 the insurer had a reasonable basis in law or in fact for  
9 contesting the claim or the amount of the claim, whichever is in  
10 issue.

11 (6) (a) An insured may file an action under this section,  
12 together with any other cause of action the insured has against  
13 the insurer. Actions may be bifurcated for trial ~~where~~ when  
14 justice so requires.

15 (b) A third-party claimant may not file an action under  
16 this section until after the underlying claim has been settled or  
17 a judgment entered in favor of the claimant on the underlying  
18 claim.

19 (7) The period prescribed for commencement of an action  
20 under this section is:

21 (a) for an insured, within 2 years from the date of the  
22 violation of 33-18-201; and

23 (b) for a third-party claimant, within 1 year from the date  
24 of the settlement of or the entry of judgment on the underlying  
25 claim.

26 (8) As used in this section, an insurer includes a person,  
27 firm, or corporation ~~utilizing~~ using self-insurance to pay claims

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1 made against ~~them~~ the person, firm, or corporation."

2 { *Internal References to 33-18-242:* \*

3 7-34-103 33-1-102 33-1-1205 33-18-232

4 33-18-232 33-28-207 33-35-306 }

5

6

7 NEW SECTION. **Section 2. Applicability.** [This act] applies  
8 to medical malpractice claims arising after [the effective date  
9 of this act].

10 - END -

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